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EXAMINER

CHEVALIER, ROBERT

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARY LAFUZE COMER and SHU LIN

Appeal 2009-002835
Application 10/521,398
Technology Center 2600

Decided: June 14, 2010

Before MARC S. HOFF, CARLA M. KRIVAK, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-27. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellants' claimed invention is a method and apparatus for providing a base layer containing base data representing a first version of a digital recording and an enhancement layer containing enhancement data that can be combined with the base data to represent a second version of the digital recording (Spec. 2:9-16). The first version can include standard definition content and the second version can include high definition content (Spec. 2:14-16). The base layer is interleaved with the enhancement layer by multiplexing (Spec. 2:17-18).

Independent claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of providing multiple versions of a digital recording comprising the step of multiplexing a base layer with an enhancement layer, said base layer having base data including cells associated with base interleave units and representing a first version of the digital recording, and said enhancement layer having enhancement data including cells associated with enhancement interleave units, wherein said cells associated with said enhancement interleave units can be combined with said cells associated with said base interleave units to represent a second version of the digital recording.

REFERENCES

Horne	US 5,515,377	May 7, 1996
Hughes	US 2004/0033061 A1	Feb. 19, 2004

The Examiner rejected claims 15-27 under 35 U.S.C. § 101.

The Examiner rejected claims 1-12 and 15-25 under 35 U.S.C.

§ 103(a) based upon the teachings of Hughes and Horne.

The Examiner rejected claims 13, 14, 26, and 27 under 35 U.S.C. § 103(a) based upon the teachings of Hughes, Horne, and Official Notice.

Appellants contend 15-27 contain statutory subject matter (App. Br. 21). Appellants further contend Hughes and Horne do not teach the method and medium of claims 1-27 (*see inter alia* App. Br. 23).

ISSUES

Did the Examiner err in rejecting claims 15-27 under 35 U.S.C. § 101 as directed to a recording medium storing non-functional descriptive material?

Did the Examiner err in finding Hughes and Horne teach a base layer and an enhancement layer interleaved by multiplexing as Appellants' claim?

FINDINGS OF FACT

1. Hughes teaches a DVD 110 having a first data storage track 112 and a second data storage track 114. The first and second data storage tracks may be located on the same physical layer or on different physical layers of the DVD (§ [0031]).

2. Hughes further teaches the first track stores base layer data and the second track stores enhancement layer data. The two tracks can be separate tracks or interleaved by time division multiplexing so they can be simultaneously read (§ [0034]; Fig. 5).

3. Horne teaches a two layer video encoding technique that includes encoding two bit streams. A first bit stream includes an encoded base layer (bit stream BL) and a second bit stream includes an encoded enhancement layer (bit stream EL) (col. 3, ll. 31-36).

4. The base layer bit stream and enhancement layer bit stream of Horne are packetized into fixed length cells (col. 8, ll. 27-29).

PRINCIPLES OF LAW

Section 101 of the Title 35 of the United States Codes states:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 U.S.C. § 101 (2002).

ANALYSIS

Rejection under 35 U.S.C. § 101

The Examiner's finding that claims 15-27 only recite a medium having non-functional descriptive material stored thereon (Ans. 8) is without merit.

As Appellants assert, claim 15 recites a DVD medium that includes a physical, interconnected and functional arrangement of contents (App. Br. 22). That is, claim 15 recites interleaving a base layer and an enhancement layer, the base layer and enhancement layer.

Descriptive material can be characterized as either "functional" or "non-functional." *Manual of Patent Examining Procedure* (MPEP) § 2106.01 (Eighth Ed., Rev. 6, Sept. 2007).¹ Reciting either type of descriptive material per se, however, is non-statutory. *See In re*

¹ "Non-functional" descriptive material, such as music, literary works, and compilations or mere arrangements of data, lacks any functional interrelationship and therefore does not fall into any of the enumerated

Warmerdam, 33 F.3d 1354, 1360-61 (Fed. Cir. 1994); *see also* MPEP § 2106.01 (discussing functional and non-functional descriptive material when claimed as descriptive material per se).

Although Appellants' claim 15 recites functional descriptive material, it is not recited per se; rather it is tied to the DVD medium and the layers therein. As a result, the functional descriptive material is structurally and functionally interrelated to the medium, and is considered statutory because the structure permits the function of the descriptive material to be realized. *See Warmerdam*, 33 F.3d at 1360-61. Thus, claims 15-17 are statutory under 35 U.S.C. § 101 and the Examiner's rejection is reversed.

Rejection under 35 U.S.C. § 103

Appellants argue claims 1-27 separately. However, the arguments provided are substantially similar and all rely on the arguments presented with respect to claim 1. Thus, this rejection is addressed with respect to representative claim 1.

The Examiner finds Hughes teaches multiplexing a base layer with an enhancement layer (FF 1, 2) as claimed. The Examiner also finds Hughes does not teach or suggest base layer data including cells associated with base interleaving units and enhancement layer data including cells associated with enhancement interleave units, but cites Horne for teaching this feature (Ans. 4).

statutory categories. Manual of Patent Examining Procedure, § 2106.01, Rev. 6, Sept. 2007. "Functional" descriptive material, on the other hand, has been characterized in the computer context as consisting of data structures and programs that impart functionality when employed as a computer component. *Id.*

Appellants contend neither Hughes nor Horne teach or suggest a base layer including base interleave units representing a first version of digital data and an enhancement layer including enhancement interleave layers representing a second version of digital data, as recited in claim 1 (App. Br. 24). That is, Appellants assert, Horne teaches the base layer and enhancement layer represent two layers of a single version of an image (App. Br. 25).

The Examiner however, cited Horne only for showing that it was known in the art at the time of Appellants' invention to show "base layer data including cells associated with the base interleaving units and the enhancement layer data including cells associated with the enhancement interleave units" (FF 3, 4; Ans. 9). Hughes teaches multiplexing a base layer with an enhancement layer, the base interleave units representing a first version of a digital recording and the enhancement interleave units representing a second version of the digital recording as shown in Hughes' Figure 5 (FF 2). Horne discloses base layer data that includes cells associated with the interleaving units (FF 4). Thus, it would have been obvious to one skilled in the art that Hughes' layers would include cells as taught by Horne. Accordingly, representative claim 1 is obvious over the combination of these references, as are claims 2-17, which fall therewith.

CONCLUSION

The Examiner erred in rejecting claims 15-27 under 35 U.S.C. § 101.

The Examiner did not err in rejecting claims 1-27 under 35 U.S.C. § 103.

Appeal 2009-002835
Application 10/521,398

DECISION

The Examiner's decision rejecting claims 1-27 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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